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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,874	10/07/2003	Gloria Borgstahl	NE-0002	7396

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EXAMINER

YUN, JURIE

ART UNIT PAPER NUMBER

2882

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No. 10/681,874	Applicant(s) BORGSTAHL ET AL.	
	Examiner Jurie Yun	Art Unit 2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-29-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. A new abstract is required. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The disclosure is objected to because of the following informalities: on page 9, line 34, reference is made to "Figure 2" of which there is none. Appropriate correction is required.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "x-ray emitting source" and "sample holder" of claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the

examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4-9 are rejected under 35 U.S.C. 112, second paragraph, because method claims 4-9 improperly depend on (directly or indirectly) apparatus claim 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowen et al. (USPN 6,782,076 B2) and further in view of Amelio (USPN 3,866,067) and Atac et al. (USPN 5,978,444).

9. With respect to claims 1, 4, and 9, Bowen et al. disclose a digital topography imaging system comprising: an x-ray emitting source (12); a sample holder (42); a charge coupled device (CCD) camera (column 4, lines 16-17); and a means for acquiring and displaying images of a sample; wherein x-rays from the x-ray emitting source pass through a sample, and are converted by the CCD camera into electrical

signals so that the resulting x-ray reflection profiles are measured and the structure of the sample is acquired and displayed (column 4, lines 35-52).

Bowen et al. do not disclose the CCD camera with antiblooming circuitry which reduces pixel image corruption due to CCD camera pixel overloading. Amelio discloses antiblooming circuitry for a CCD (column 1, lines 5+). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use antiblooming circuitry in the Bowen et al. CCD camera, for better image resolution.

Bowen et al. are silent as to whether the CCD camera converts x-ray signals to electrical signals without the use of phosphor. Atac et al. disclose a direct conversion CCD (column 2, lines 1+). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the direct conversion CCD taught by Atac et al., in the Bowen et al. apparatus, to allow for better image resolution (column 1, lines 31-42) and to allow detection of X-rays directly and on a real-time basis (column 2, lines 3-5).

It is noted that regarding claim 9, "may be employed" is not a positive recitation, and furthermore, there are no method steps to perform determination of the crystalline structure. Bowen et al. disclose determining the crystalline structure of a sample (column 1, lines 1-5).

10. With respect to claim 2, Bowen et al. disclose the CCD camera has a pixel size of less than 10 μm (column 4, line 19).

11. With respect to claims 5-8, Bowen et al. do not disclose the specific method steps claimed. However, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to use those known processing techniques to provide clear images in the Bowen et al. apparatus, to enhance image resolution.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowen et al. (USPN 6,782,076 B2) and further in view of Amelio (USPN 3,866,067) and Atac et al. (USPN 5,978,444) as applied to claim 1 above, and further in view of Chapman et al. (USPN 5,987,095).

13. With respect to claim 3, Bowen et al. do not disclose the x-ray source has a shutter, allowing for variable exposure times. Chapman et al. disclose an x-ray source with a shutter (14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the x-ray source of Bowen et al. include a shutter, to allow for exposure control and limit unnecessary scatter, as taught by Chapman et al. (column 4, lines 55-57).

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jurie Yun whose telephone number is 571 272-2497. The examiner can normally be reached on Monday-Friday 8:30-5:00pm.

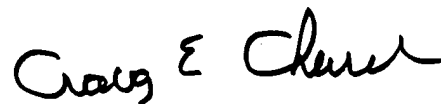
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on 571 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jurie Yun
February 16, 2005



Craig E. Church
Primary Examiner